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No. ____

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

STEAMSHIP OPERATORS INTERMODAL COMMITTEE,

*Petitioner,*

—v.—

THOMAS D. LARSON, Secretary of the Department of Transportation of the Commonwealth of Pennsylvania; HARVEY BARTLE III, Attorney General of the Commonwealth of Pennsylvania; DANIEL F. DUNN, Commissioner of the Pennsylvania State Police,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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## QUESTIONS PRESENTED

I

In determining whether a state highway safety statute constituted an unconstitutional burden on interstate commerce, this Court in *Bibb v. Navajo Freight Lines, Inc.* 359 U.S. 520 (1959), and in *Raymond Motor Transportation Inc. v. Rice,* 434 U.S. 429 (1978), balanced the total effect of the statute as a highway safety measure against

the burden on commerce. Thereafter in *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662 (1981), the "balancing" standard was again applied to such a statute by four justices in the plurality opinion. Two justices in the concurring opinion would have balanced the lawmaker's intended benefits against the statute's burden on commerce but found the statute protectionist in nature and therefore *per se* illegal. Three justices in the dissenting opinion applied a "highly deferential" standard which merely required that the statute be a rational safety measure. The first question presented is whether the majority opinion of the Court of Appeals in the instant case was correct in applying the highly deferential standard of *Kassel's* dissenting opinion to reverse the District Court and decide that the state highway safety statute here challenged was constitutional. Both the majority and dissenting judges in the Court of Appeals acknowledged that the prior opinions of this Court were not clear and that the statute's constitutionality would depend upon whether the balancing or highly deferential standard were applied.

II

The second question presented is whether a statute which prohibits trucks and trailers registered in another state from traveling in the enacting state unless they display certificates of safety inspection issued by any state is without rational basis and therefore violates the Due Process Clause of the Fourteenth Amendment.

## PARTIES IN THE COURT OF APPEALS

Respondents, Thomas D. Larson, Harvey Bartel III and Daniel F. Dunn, were the Appellants in the United States Court of Appeals for the Third Circuit.

American Trucking Associations, Inc., Pennsylvania Motor Truck Association, Maryland Truck Association, Coastal Lines, Inc., CRST, Inc., Smith Transfer Corp., Ryder Truck Lines, Inc., Preston Trucking Corp. (collectively, the "ATA Petitioners") and Petitioner Steamship Operators Intermodal Committee ("SOIC") were the Appellees. The ATA Petitioners are filing a separate petition for certiorari.

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## OPINIONS BELOW

The majority and dissenting opinions of the Court of Appeals, not yet reported, appear in the Appendix A1 and A31, respectively.[1] The opinion of the District Court for the Middle District of Pennsylvania is reported at 515 F. Supp. 1327 and appears in the Appendix A45.

## JURISDICTION

The judgment of the Court of Appeals for the Third Circuit (Appendix A76) is dated and it was entered on July 20, 1982. Timely petitions for rehearing and suggestions for rehearing *in banc* were denied by an order dated August 13, 1982 (Appendix A78) and this Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

## STATUTE INVOLVED

The pertinent sections of the Pennsylvania Motor Vehicle Code referred to herein are set forth in the Appendix A82.

## STATEMENT OF THE CASE

On June 18, 1980, Pennsylvania enacted a statute to become effective on August 17, 1980, which required all heavy trucks and trailers on its highways to display a certificate of inspection issued by Pennsylvania or by another state. On August 19, 1980, the District Court for the Middle District of Pennsylvania, in an action instituted by the ATA Petitioners pursuant to

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1 Unless otherwise stated, all page citations to "the Appendix" refer to pages in a document called "Appendix for Petitioners, American Trucking Associations, Inc., et al., and Steamship Operators Intermodal Committee, to Petitions for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit," dated September 20, 1982, which is being filed simultaneously with the petitions of the ATA Petitioners and this Petitioner.

28 U.S.C. § 1331 against the Respondents, state officials empowered to administer and enforce the statute, granted a temporary restraining order enjoining the Respondents from enforcing the statute. Thereafter, Petitioner SOIC intervened on the side of plaintiffs and, after further hearings, the District Court granted a preliminary injunction. After trial of the action, the District Court declared that the statute unconstitutionally burdened interstate commerce, and permanently enjoined its enforcement (515 F. Supp. 1327).

Respondents appealed to the Court of Appeals for the Third Circuit, which on July 20, 1982, in a two-to-one decision, reversed the decision of the District Court (Appendix A1-A44). Thereafter SOIC and the ATA Petitioners filed petitions for rehearing and suggestions for rehearing *in banc*, which were denied on August 13, 1982 (Appendix A78). In response to SOIC's and the ATA Petitioners' subsequent motion for a stay of the mandate of the Court of Appeals pending application for a writ of certiorari, the Court of Appeals ordered on August 20, 1982 that the issuance of certified judgment in lieu of formal mandate be stayed until September 20, 1982 (Appendix A80).

SOIC is an unincorporated association of steamship operators[2] engaged in the "intermodal" transportation of containerized cargo in the interstate and foreign commerce of the United States. This intermodal transportation involves transfers of containerized cargo between steamships and tractor-drawn "chassis." A chassis is a relatively simple two-wheeled trailer constituting the undercarriage on top of which a container rides. For the land portion of the intermodal transportation, ocean-going containers filled with cargo are mounted and secured to chassis which are owned or leased on a long-term basis by the steamship operators (A. 236-237).[3]

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2 SOIC's membership and the listing required by Rule 28.1 of the Rules of this Court are annexed to this Petition as Appendix B-1 and Appendix B-2, respectively.

3 Citations ("A.") are to pages in the Joint Appendix in the Court of Appeals.

The chassis and container combinations are hauled by truck tractors generally operated by Interstate Commerce Commission certificated motor carriers pursuant to equipment interchange agreements between the motor and steamship carriers. There are approximately 150,000 steamship chassis in the United States. Since the great majority of these chassis are registered in states which do not require inspections, they are therefore without certificates of inspection. Only 40 are registered in Pennsylvania (A. 240-1, 271-3, 280, 288).

Steamship chassis move randomly throughout the United States and each SOIC member's chassis are interchangeable (A. 317-9, 267, 279, 307). In these days of high-speed discharge of cargo from a ship, it is virtually impossible to match a container which will have to be trucked through Pennsylvania with a chassis which bears an inspection certificate. Bills of lading frequently do not reveal the ultimate destination of containers (A. 245-7, 269). It is also impossible to predict and segregate in advance those chassis which will transit Pennsylvania during any given period of time (515 F. Supp. at 1333-4; A. 245-7, 269). Since very few of the chassis are registered in states which require inspection, the effect on SOIC if the Pennsylvania statute is implemented will be to require that almost all of the 150,000 chassis of its members will for the first time have to obtain and will thereafter have to renew certificates of inspection before they can use the highways of Pennsylvania (A. 271, 280-1, 288, 296, 309, 325).

The uncontroverted testimony at the trial was that there would be crucial delays attendant upon initial and continued compliance with the statute. There are only 23 states which permit inspections of out-of-state trailers and each trailer inspection takes about 30 minutes (A. 108). Pennsylvania requires two inspections per year whereas other states require one or fewer inspections per year. Chassis will have to be brought to inspection stations in those states which permit inspections of trailers registered in other states by bundling and transporting them on trailers or a combination of railroad cars and trailers, a very costly and time-consuming procedure, or

by driving them to the stations individually, a more costly and time-consuming procedure, if the stations have no facilities for stacking and unstacking bundles. SOIC members would have to increase the number of their chassis by 20 to 25% in order to keep them inspected without making fewer chassis available for intermodal transportation. Most certainly chassis inspection will be achieved only at enormous cost and with substantial delay (A. 280-1, 296-7, 325-8).

Compliance with the statute will impose so onerous a burden on SOIC's members that they will do their utmost to avoid transit of their chassis through Pennsylvania by eliminating service to the Port of Philadelphia and refusing to transport, intermodally by tractor-chassis combination, cargo originating and terminating at points in Pennsylvania (A. 325-8, 308-9, 248-50, 279-80). Because of Pennsylvania's central location this elimination of service will affect steamship service at ports on the Atlantic coast from Boston to Norfolk and will cause a major interruption of the flow of foreign commerce (A. 322-3, 269-71).

That this is no idle threat was demonstrated not only by the testimony of numerous executives of SOIC's members (A. 325-8, 308-9, 248-50) but also by port and shipper interests. The Manager of Regulatory Affairs for the Delaware River Port Authority, a bistate agency created by compact between Pennsylvania and New Jersey, testified that the likelihood of water carriers discontinuing service to Philadelphia because of the excessive costs associated with compliance with the statute is very real. He also testified that a number of shipping companies had already discontinued service to the Port of Philadelphia in the past for reasons of unsatisfactory profitability and that other companies would likely do so in the future if the statute became effective. He further testified that the impact of cessation of ocean container service on the economy of the port would be disastrous (A. 352-5).

The Traffic Manager of Volkswagen, U.S.A., Pennsylvania's largest single private employer, testified that his company

would be substantially adversely affected by an interruption in containerized intermodal service since even a short delay in the supply of parts via container to its assembly line would cause a shutdown of operations at a tremendous cost to his company (A. 301-4).

The Director of the Cargo Traffic Division of the Military Sealift Command, Atlantic Headquarters of the United States Department of Defense, which Department has two supply depots in Pennsylvania, testified that a delay or interruption of containerized service from these depots would severely interrupt the flow of material to the United States armed forces in Europe and the Middle East with an attendant deterioration of preparedness, efficiency and morale and increased cost and damage (A. 340-2, 345, 347-8).

The District Court which heard this and other testimony found that the statute imposed substantial burdens on interstate and foreign commerce (515 F. Supp. at 1332). Neither opinion of the Court of Appeals controverted this finding (Appendix A1, A31).

## REASONS FOR GRANTING THE WRIT

### (a) The Importance of the Issues Involved.

The statute (75 Pa. C.S. § 4703(a)) which Pennsylvania has enacted as an amendment to its Motor Vehicle Code provides in material part:

> No motor carrier vehicle shall be operated on a highway unless it displays a currently valid certificate of inspection issued under this chapter or by another state.

The Pennsylvania Motor Vehicle Code (75 Pa. C.S. § 102) defines a "motor carrier vehicle" to include "a truck, truck-tractor or combination" weighing over 17,000 pounds. It also defines a "combination" as "two or more vehicles physically interconnected in tandem," a "trailer" to be within the term "vehicle" and "semi-trailer" to be within the term "trailer".

Clearly then, chassis are subject to inspection should the statute become effective since when travelling on the highways in Pennsylvania, they will be part of combinations over 17,000 pounds in weight.

The issues to be presented to this Court if the writ of certiorari is granted are of exceptional public importance and have immediate importance far beyond the particular facts and parties involved. This statute is unique in that it is the first enacted by any state prohibiting a motor vehicle registered in another state to be operated on the enacting state's highways unless the vehicle bears a certificate of safety inspection. This certificate may be issued by the enacting state or any other state which issues such certificates. That no other state has seen fit to enact such a statute in the many years that compulsory safety inspection for motor vehicles has been in effect speaks eloquently of the need for definitive judicial review at this time to ascertain whether the enormous disruption of interstate and foreign commerce which implementation of the statute will cause should be permitted to occur.

State highway safety legislation is a matter of great concern to the legislatures of every state. The grant of certiorari affords the Court an excellent opportunity to delimit the constitutional boundaries of such legislation so as to guide all states in their enactment of highway safety legislation.

**(b) The Proper Constitutional Standard Applicable to a State Highway Safety Statute Should Be Settled by the Court.**

The first of the three most recent decisions of this Court that considered the constitutionality of state highway safety statutes under the Commerce Clause is *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), in which the balancing standard was applied in deciding that a state statute requiring the use of contour mud flaps on trucks being driven through the state imposed an unconstitutional burden on interstate commerce.

The second decision is *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429 (1978), where all eight justices who

participated in the decision joined in the opinion of the Court which applied the balancing standard to interdict under the Commerce Clause state highway safety regulations that prohibited interstate trucking companies from operating double trailers longer than 55 feet on the state highways. The Court found that the state "virtually defaulted in its defense of the regulations as a safety measure" (434 U.S. at 444). However, four justices (Blackmun, Burger, Brennan and Rehnquist) also joined in a concurring opinion which stated that where a state's "safety justifications are not illusory, the Court will not second-guess legislative judgment about their importance in comparison with related burdens on interstate commerce" (434 U.S. at 449).

The most recent decision of the Court, *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662 (1981), held an Iowa statute prohibiting 65-foot double trailer trucks on that state's highways to be an unconstitutional burden on interstate commerce. The four justices who subscribed to the plurality opinion (Powell, White, Blackmun and Stevens) applied the balancing standard of *Bibb* and *Raymond* in finding that the statute furthered safety so marginally and interfered with commerce so substantially as to be invalid under the commerce clause (450 U.S. at 670-1). The two justices who joined in the concurring opinion (Brennan and Marshall) stated that the burdens imposed on commerce should be weighed against the safety benefits sought by the State's lawmakers but held the statute to be virtually *per se* invalid under the Commerce Clause since it was protectionist in nature (450 U.S. at 680-7). The three justices who subscribed to the dissenting opinion (Rehnquist, Burger and Stewart) applied a standard denominated in both opinions in the Court of Appeals in the instant case as "highly deferential" (Appendix A16, A33) and found that since the statute was a rational safety measure and since its safety benefits were more than slight or problematical, it therefore was valid under the Commerce Clause (450 U.S. at 696).

The District Court in the case at bar thought the balancing standard was the correct standard to apply, but hesitated to

apply it because of the inconclusiveness of the opinions of this Court. Instead it applied the highly deferential standard of *Kassel's* dissent as the standard most favorable to the statute. The District Court found that even under that standard the statute violated the Commerce Clause (515 F. Supp. at 1338-40).

On appeal, the majority opinion of the Court of Appeals also applied the highly deferential standard of *Kassel's* dissenting opinion (Appendix A17) but found that since the statute had some safety benefits, the statute was valid under the Commerce Clause (Appendix A27). The Court of Appeals reasoned that "if we attempt to align the justices, it appears that there are five justices who have rejected the balancing approach in the area of safety regulations, if we count not only the three justices adhering to Justice Rehnquist's opinion but Justice Brennan and Justice Marshall [concurring] as well" (Appendix A17). The plurality in *Kassel* disagreed with that conclusion (450 U.S. at 679 n. 27), but even if that conclusion is correct, the same reasoning leads to the further conclusion that six Justices in *Kassel* rejected the "highly deferential" standard.

The other reasons stated by the Court of Appeals' majority for its choice of the highly deferential standard, *i.e.*, that issues of highway safety have always been considered local in nature, that the standard applicable in equal protection cases ought also be applied to non-discriminatory highway safety cases and that the Court is particularly reluctant to impose judicial values over legislative values in the safety area (Appendix A17-18), indicate that the Court of Appeals believed that *Kassel* had unsettled what previously had been settled law and that in determining the constitutionality of highway safety laws under the Commerce Clause the Court of Appeals was free to choose from among any of the three standards applied in *Kassel*.

The dissenting opinion of the Court of Appeals agreed that as a result of its decision in *Kassel*, "the Supreme Court has not yet arrived at an agreed-upon standard for determining the

constitutionality of a state's safety-related legislation that allegedly interferes with interstate commerce" (Appendix A32). It, too, believed that the choice of standard would determine the outcome of the litigation (Appendix A43 n. 10), but chose the balancing standard as the "better analytical approach to dormant commerce clause matters" (Appendix A35).

In its conclusion *Kassel's* dissenting opinion stated that as a result of this Court's three separate opinions "the Court today neither says nor does very much at all *** and *** the jurisprudence of the 'negative side' of the Commerce Clause remains hopelessly confused" (450 U.S. at 706).

That these words were prophetic is borne out not only by the opinions of the District Court and Court of Appeals in this case, but also by the opinions in *National Tank Truck Carriers v. City of New York,* 677 F.2d 270 (2d Cir. 1982), discussed below, and in *Gutridge v. Virginia,* 532 F. Supp. 533, 538 (E.D.Va. 1982), in which the balancing standard was applied. Clearly then the law in the area of highway safety requires clarification and settlement by this Court.

**(c) Conflict Between the Courts of Appeals.**

The Court of Appeals for the Second Circuit differs from the Court of Appeals for the Third Circuit in its interpretation of this Court's highway safety decisions. In *National Tank Truck Carriers v. City of New York,* 677 F.2d 270 (2d Cir. 1982), the Court applied the balancing standard in determining that New York City highway safety regulations regarding the transportation of hazardous gases by tank truck were constitutionally valid under the Commerce Clause. It specifically rejected the highly deferential standard (or "rational relation test" as it called that standard) (677 F.2d at 273). The opinion cites *Kassel* (677 F.2d at 274), but apparently does not regard *Kassel* as having vitiated the effect of *Raymond* and *Bibb* or obliterated the balancing standard as the proper constitutional test of state highway statutes under the Commerce Clause. We

respectfully submit that the Court should issue a writ of certiorari in order to resolve the conflict between the two Courts of Appeals.

**(d) The Court of Appeals Exceeded Its Powers.**

Under either the balancing or highly deferential tests of constitutionality, the statute fails because its safety benefits are not more than slight or problematical, or illusory, as the District Court held (515 F. Supp. at 1340). The District Court's holding was based on findings of fact that were not held clearly erroneous by the Court of Appeals as they were required to be in order to be set aside under Rule 52(a) of the Federal Rules of Civil Procedure.

The District Court found that there was no correlation between required state inspection of vehicles and highway safety. The evidence showed, for example, that there was no statistical relationship between truck tractors registered in "inspection" states and fatal accidents involving such tractors (515 F. Supp. at 1331). In addition, Pennsylvania's inspection requirements were found insufficient to discover and correct mechanical defects (515 F. Supp. at 1331-32). They added nothing to the effects of federal regulations administered under supervision of the Bureau of Motor Carrier Safety, which require systematic and daily inspection, repair and maintenance of vehicles operated by interstate motor carriers. In addition, motor carriers were found typically to inspect their vehicles thoroughly from four to twelve times per year depending upon vehicle usage, region of the county, and other factors (515 F.Supp. at 1332). The Court therefore concluded that

> [i]n making our sensitive consideration of the purported safety benefits in relation to the burden on interstate commerce, *it is clear that these insubstantial benefits are trivial while the burden on commerce is substantial* [emphasis supplied].

(515 F. Supp. at 1339).

Under Federal Rule of Civil Procedure 52(a) the Court of Appeals was bound to accept the District Court's findings of fact unless such findings were "clearly erroneous." Instead the Court of Appeals substituted its own findings of fact for those of the District Court without demonstrating or even stating that the latter were "clearly erroneous." Such action was particularly inappropriate in a case such as this in which the findings to a great extent depended upon the District Court's judgment as to the credibility of live witnesses. *See, Walling v. General Industries Company,* 330 U.S. 545, 550 (1947), *United States v. Oregon State Medical Society,* 343 U.S. 326, 332 (1952).

**(e) Deprivation of Property Without Due Process of Law.**

**I.**

The Pennsylvania lawmakers did not require that all heavy vehicles utilizing its highways had to be inspected solely under its inspection procedures, the requirements of which are detailed in the evidence adduced the trial (A. 675-84). They also permitted inspections by any other state as long as the state issued a certificate of inspection. However, the legislative history of the statute reveals nothing and the evidence adduced at the trial reveals little about the extent and quality of such inspections in other states which issue certificates of inspection.

In its brief to the Court of Appeals, Respondents stated that "in the vast majority of cases the motor carrier vehicles would be inspected before they reached the Commonwealth's boundaries" (Brief For Appellants to Court of Appeals at 39), a clear admission that almost all motor carrier vehicles would be inspected in states other than Pennsylvania. In this brief, Respondents further stated that the out-of-state certification requirements were designed to encourage the states "to set their own standards to the stated degree that their own individual judgment would support" (Brief for Appellants to Court of Appeals at 39-40). Hence, Pennsylvania will accept any state's

current or future inspection procedures, no matter how minimal or inadequate, so long as the state issues a certificate of inspection.

Pennsylvania's proposed regulations (Appendix A49 n.5) do not attempt to evaluate the inspection procedures used in each of the various states to ascertain whether they perform what Pennsylvania would consider an adequate safety inspection of heavy motor vehicles. Neither did the evidence at the trial address this question although there was some testimony as to the frequency of inspection in a few states. For example, Maryland requires inspections only when title to a used motor carrier vehicle is transferred. Thus a valid certificate of inspection may be many years old but still be acceptable in Pennsylvania.

The right of SOIC's members to carry on their business using the highways of Pennsylvania in intermodal transportation constitutes a valuable property right, *Truax v. Corrigan,* 257 U.S. 312, 327 (1921), *New State Ice Company v. Liebmann,* 285 U.S. 262, 278 (1932), of which they can be deprived only by due process of law. We believe that the broad, wholesale and uncritical acceptance by Pennsylvania of other state's inspections is without rational basis and constitutes a deprivation of SOIC's members' property in violation of the Due Process Clause of the Fourteenth Amendment. See *Standard Oil Co. v. City of Gadsden,* 263 F.Supp. 502, 506 (N.D. Ala. 1967).

However, the majority of the Court of Appeals rejected this contention by conjecturing that the Pennsylvania "legislature could reasonably have believed that compliance with at least some inspection program in some other state, albeit not as stringent as Pennsylvania's, would further its safety purposes, and represented a reasonable accommodation to truckers already inspected elsewhere." (Appendix A30). We believe that the majority failed to consider the issue adequately. Pennsylvania's witnesses testified that inspection of certain parts of tractors and trailers were necessary in order that accidents on

Pennsylvania's highways due to mechanical failure be minimized (A. 765, 784, 846). Therefore, it was necessary that Pennsylvania know whether other states inspected these parts before accepting their inspection certificates as valid in Pennsylvania. Pennsylvania's legislature failed to ascertain this or to establish some mechanism for evaluating out-of-state inspections before they would be considered valid in Pennsylvania and therefore its statute is unconstitutional.

## II.

The evidence adduced at the trial established that chassis used to transport steamship containers had an extraordinary record of safety (A. 1345, 913-23, 253, 295, 284, 338-9). The reason for this is that chassis are low mileage vehicles (A. 285, 323) which undergo numerous inspections by the steamship carriers (A. 283-4, 333-6) and by the drivers of the tractors which haul them, pursuant to federal regulations (49 CFR § 396 *et seq.*). Furthermore, they are not motorized and are relatively simple in structure and hence have few parts that can malfunction (A. 108, 267, 644-9). Therefore, the inclusion of chassis as motor vehicles to be regulated by the Pennsylvania statute also was, we believe, without rational basis and constitutes a further violation of the Due Process Clause of the Fourteenth Amendment.

## CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit.

Respectfully Submitted,

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